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"I have always felt that we overlooked the opportunity of a lifetime in that we did not take up the great work of The Hague conferences where they left off and go on to the creation of international courts, so that we might arbitrate our international differences rather than fight them out on bloody battlefields.

"We are in favor of peace; we want the friendship of every nation on the face of the globe; we are looking for friends, but we are not looking for partners. We prefer to maintain our own independence and preserve our own sovereignty under the dome of our own Capitol at Washington.

"I still hope that when the Republican Party is in power we shall proceed to establish this machinery for the adjustment of international differences. I still hope that the Republican Party will have the wisdom and the courage to take up the great work of The Hague conferences, and carry that work on until the wars of the future shall be reduced to a minimum."

Here we have sane views from an influential quarter. They are views destined to fructify increasingly. We are informed that the supporters of Governor Lowden agree that an international conference in the future could not fail to prevent war, as was the case in 1914, because of the prestige of America, of the experiences since 1914, and of the patent need of just that kind of an organization. Senator Hiram Johnson, another presidential possibility, in an address delivered in Paterson, N. J., April 8, also declared that he would "welcome an expansion of the Hague tribunal or an international forum." For such practical matters as adjusting the chaotic conditions of exchange, plans have been perfected for a conference of representative financiers from all the nations to be held within a month in the city of Brussels. Surely the details of international equities and of international law outside the realms of finance are no less practical, pressing, or amenable to similar treatment. If international finance can be regulated only by a conference of representatives of all the nations, the same thing must be true of international trade, of international law, and hence of international peace.

Now is the time for constructive effort in the interest of a genuine and practicable foreign policy, a foreign policy true to the traditions of America's best. To our readers we plead for the widest dissemination of what that best means, for it is very pertinent just now to the future of the world. And this best is not hard to find. Neither is it strange nor difficult to understand. The *ADVOCATE* offers no apology for presenting in this number the three significant expressions from three significant men of a significant past, for our constructive foreign policy of the future must develop from that very successful foreign policy of a most wise and honorable past.

## THE WAY IT ACTUALLY WORKS

GREAT BRITAIN is a member of the League of Nations, Article X and all. This has been true since January 10 last. It is therefore of interest to make inquiry of Britain's success in promoting the peace of the world under its provisions. In a recent debate in the House of Commons, when the army estimates were up for discussion, it was pointed out that the new regular army is altogether insufficient for the defense of the "new empire." It was pointed out that the obligations which Great Britain has accepted as mandatory for the League of Nations would have to be met, and that under Article X of the Covenant it was the duty of Great Britain to go to the assistance of any member of the League who might find itself in trouble. Hence there must be a larger army and navy than ever for Britain.

When we remember that the new regular army of Great Britain is 200,000 stronger than the regular army before the war, these facts seem of still more significance.

When it is recalled that the object of warring with Germany was to crush Prussian militarism, after which we could all then live without carrying upon our shoulders the overpowering armies and navies; when we recall that the Covenant of the League of Nations was to make the way simple for the disarmament of the nations; when we recall that with the Germans being defeated, arbitration was to put an end to combat, it is interesting to note this demand out of Great Britain for "the greatest defensive force in her history. Mr. Churchill, with eyes open to the facts, realizes that there are more dangers of war now than in 1914. The imperial schemes of Britain, seemingly enhanced under the Covenant, demand the use of an increased force, we are told, along the frontiers and in the Asiatic wars. Thus the Covenant of the League of Nations seems to promote that very imperialism which is the mother of wars. There is no getting around the fact that under the terms of the Covenant Britain is proceeding to keep peoples in subjection by military force, with the result that instead of the danger of militarism being less in Britain than before the war, it is greater. That is the way it works.

In the meantime, it is interesting to note, the Germans have taken hold of their militarists and gently thrown them down the back stairs. April 11, there was received in Paris a statement from a member of the Executive Council at Düsseldorf containing these suggestive words:

"The soldiers of the Reichswehr are brigands and mercenaries. We prefer the coming of the Allies' troops to the Reichswehr. The treaty was too severe on us Germans in

an economic way, but not severe enough in the military clauses, for the Germans themselves want to be rid of militarists."

That is the way it works in a nation outside the League of Nations. Such are our manners and our times.

## CAN THE CONGRESS DECLARE PEACE?

CONGRESS can declare war. Can Congress declare peace? At this writing, that is the problem facing the United States.

Congress is proceeding to act on the theory that it has the power, for on the second anniversary declaring the existence of war between the Imperial German Government and the United States—that is to say, April 6—the Committee on Foreign Affairs of the House of Representatives reported a joint resolution providing for the termination of a state of war between this country and Germany, permitting under certain conditions the resumption of reciprocal trade with Germany, and for other purposes.

Our belief is that Congress should have, and in fact does have, the right to declare peace. True, war is ordinarily ended either by the utter subjugation of one of the two contesting parties, or by treaty. In this case the tried and familiar method would be, as we have attempted twice unsuccessfully to do, namely, to establish the peace by treaty. If we were to pursue that method, we would have to proceed under that section of the Constitution which vests the treaty-making power in the President and the Senate. Under that section of the Constitution, treaty is not defined, neither is any class of treaties withdrawn. The presumption is, however, and always has been, that all treaties between the United States and other countries are to be made by the President and the Senate—that is to say, negotiated by the President or his authorized agents and submitted by the President to the Senate for its advice and consent to their ratification.

There are two points of view from which a treaty may be considered: First, from the point of view that it is a law; secondly, from the point of view that it is a contract. Article VI of the Constitution provides that "this Constitution, and the laws of the United States . . . and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

As far as the United States is concerned, a treaty is a law. As such, it repeals all existing laws contrary to its terms, and is itself repealed by any law or subsequent treaty inconsistent with its terms. Considered as law,

a treaty only has force and effect within the jurisdiction of the enacting country, being thus quite outside the jurisdiction of any other country. As such, it is a national and unilateral act.

But from the point of view that a treaty is a contract, it is a bilateral act, requiring two or more parties, upon both of whom it is binding because of their mutual consent to it. Differing from the contract of municipal law, the consent may be voluntary or imposed. It is an international act, having force and effect within the jurisdiction of the parties thereto, whereas an act of Congress, whether it be an ordinary statute or a joint resolution, has only force and effect of law within the United States. A treaty to which we are a party has force and effect within the United States and in the other contracting country or countries. As far as the United States is concerned, a law or treaty has equal force within the jurisdiction of the United States; and, as the last expression of the sovereign will, whether it be expressed in treaty, statute, or resolution, it is binding on all citizens of the United States. A treaty of peace between the United States and another country, with which the United States is at war, ends the war, because the treaty has the force and effect of a statute and as such repeals the former act of Congress declaring the condition of war to exist. If the United States is to end the war by treaty, then such treaty must be negotiated by the President and advised and consented to by two-thirds of the Senators present.

But by the practice and law of nations, which is a part of the law of our land, war is ended in ways other than by treaty. If a war is not ended by treaty, an act of Congress, as the latest expression of the sovereign will, may end war. This means that war may be ended by the United States with another country without the formality of a treaty. For example, it has been held in an unbroken series of decisions (from the Prize Cases, in 2 Black's Reports, 635, to Young, assignee of Collie, in 97 U. S. Reports, 39) that the Civil War in all hostile operations must be regarded as an international war (*Stovall, adm'r, v. U. S.*, 1891, 26 Ct. Cl., 226, 240). Yet, as stated by Mr. Justice Grier, in the Prize Cases (2 Black, 668), decided in 1862:

"By the Constitution Congress alone has the power to declare a national or foreign war. It cannot declare war against a State, or any number of States, by virtue of any clause in the Constitution."

But the Civil War, universally regarded as a war in the international sense, and in which the nations of the world proclaimed their neutrality, was not ended by a treaty. It ended not by treaty, but by proclamation (*The Protector*, 1871, 12 Wallace, 700).